

1 File No. 98.0246
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DANA PASQUALE,)	CASE NO.	3:11-CV-05265-JCS
)		
Plaintiff,)	NOTICE OF HEARING AND DEFENDANT'S	
)	MOTION FOR SUMMARY JUDGMENT	
vs.)		
)		
LAW OFFICES OF NELSON & KENNARD,)		
)	DATE:	04/19/13
Defendants.)	TIME:	9:30 A.M.
)	DEPT:	G, 15 th Fl.
)		

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21 **To: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 NOTICE IS HEREBY GIVEN that on February 15, 2013 at 9:30 a.m.,
23 or as soon thereafter as the matter may be heard, in Courtroom G of
24 the above-entitled court, located at 450 Golden Gate Ave., 15th
25 Floor, San Francisco, California 94102, Defendant NELSON & KENNARD
26 will move this court for and order granting it summary judgment on
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1 the Amended Complaint of Plaintiff DANA PASQUALE and a judgment of
2 dismissal, with prejudice.

3 This motion is made on the grounds that;

4 (1) Defendant's voice messages were not "communications" under
5 the FDCPA (15 USC 1692 et seq.) and California's Rosenthal Act
6 (California Civil Code 1788 et seq.) where Plaintiff had actual
7 knowledge of the identity of the caller and the purpose of the call.
8 Therefore Defendant was not required to provide the "mini Miranda"
9 in subsequent voice mail messages;
10

11 (2) to the extent the voice messages complained of are deemed
12 to be "communications" under the FDCPA, liability is excused
13 pursuant to 15 USC 1692k as a bona fide error occurred
14 notwithstanding the maintenance of procedures reasonably adapted to
15 avoid such error;
16

17 (3) Defendant's liability under the Rosenthal Act is
18 derivative of its liability, if any, under the FDCPA. Therefore, no
19 liability accrues as a result of the failure of Plaintiff's FDCPA
20 claim, and;
21

22 (4) attorneys are exempt from liability under the Rosenthal
23 Act.

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1 This motion is based upon this Notice and Motion together with
2 the Memorandum of Points and Authorities in Support of Defendant's
3 Motion for Summary Judgment and the Declaration of Robert Scott
4 Kennard in Support of Defendant's Motion for Summary Judgment filed
5 concurrently herewith.

6 Respectfully Submitted,
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9 Dated: February 1, 2013

By: //s// Robert Scott Kennard
Robert Scott Kennard
Attorney for Defendant
NELSON & KENNARD